

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 United States of America,

4 Plaintiff

5 v.

6 Alcides Aballe-Gonzalez,

7 Defendant

Case No.: 2:21-cr-00068-JAD-BNW

**Order Denying Motion to Reduce Sentence  
under Amendment 821**

[ECF No. 33]

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9 Defendant Alcides Aballe-Gonzalez is roughly 17 months into serving his 42-month  
10 sentence for possession with intent to distribute methamphetamine. He moves for a sentence  
11 reduction based on recent changes to the sentencing guidelines known commonly as Amendment  
12 821. His counsel at the Federal Public Defender's office, appointed under General Order 2023-  
13 9, filed a notice of non-eligibility, disagreeing with Aballe-Gonzalez's pro se calculations.  
14 Because Aballe-Gonzalez does not qualify for an adjustment to his criminal-history points or his  
15 offense level, I deny his motion.

16 **Discussion**

17 The Sentencing Commission submitted criminal-history amendments to Congress in May  
18 2023, they took effect in November 2023, and courts may apply them retroactively beginning in  
19 February 2024.<sup>1</sup> Aballe-Gonzales seeks relief under two of those amendments: the one that  
20 reduces the impact of the extra "status points" imposed for reoffending while still under a

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<sup>1</sup> Sent'g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60534 (Sept. 1, 2023).

1 criminal-justice sentence, and another that provides relief to zero-criminal-history-point  
2 offenders.<sup>2</sup>

3 The first change, added to the guidelines as § 4A1.1, reduces the impact of “status points”  
4 on a sentence. Status points are additional criminal-history points applied to a defendant who  
5 committed his crime of conviction while under another criminal-justice sentence. Because the  
6 Commission found that status points are less reliable indicators of rearrest, these changes allow  
7 courts to depend less on status points to determine criminal history.<sup>3</sup> A defendant with seven or  
8 more criminal-history points may receive a one-point reduction in his status points, while a  
9 defendant with six or fewer criminal-history points may have his status points eliminated for  
10 committing his offenses while under a criminal-justice sentence.<sup>4</sup>

11 The second provision was added to the guidelines as § 4C1.1 and lowers the offense level  
12 of zero-point offenders whose crime did not involve specific aggravating factors.<sup>5</sup> Zero-point  
13 offenders are defendants with no criminal-history points. The Commission found that these  
14 offenders have lower recidivism rates than other offenders, including those with one criminal-  
15 history point, that warrant a reduction in offense level.<sup>6</sup> A defendant with zero criminal-history  
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19 <sup>2</sup> ECF No. 33.

20 <sup>3</sup> *Id.* at 60535–36; *see also* U.S. Sent’g Comm’n, *Revisiting Status Points* (2022),  
[https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220628_Status.pdf)  
21 [publications/2022/20220628\\_Status.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220628_Status.pdf).

22 <sup>4</sup> Sent’g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60535 (Sept. 1, 2023).

23 <sup>5</sup> U.S. Sent’g Comm’n Guidelines Manual § 4C1.1 (U.S. Sent’g Comm’n 2023).


<sup>6</sup> U.S. Sent’g Comm’n, *Amend. to the Sent’g Guidelines* (2023),  
[https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-](https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf)  
[amendments/202305\\_Amendments.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf).

1 points whose offense did not involve threats of violence or sexual acts may now receive a two-  
2 level decrease in his offense level.<sup>7</sup>

3 Aballe-Gonzalez contends that he is eligible for a sentence reduction based on these  
4 amendments.<sup>8</sup> But as his counsel acknowledges, Aballe-Gonzalez doesn't qualify for either  
5 reduction.<sup>9</sup> Aballe-Gonzalez did not receive any status points at the time of sentencing because  
6 he was not under a criminal-justice sentence when he committed this offense.<sup>10</sup> So there are no  
7 status points to remove under § 4A1.1. And with one criminal-history point for a May 2020  
8 prior conviction, he wasn't a true zero-point offender entitled to a reduction under § 4C1.1.<sup>11</sup>

9 **Conclusion**

10 IT IS THEREFORE ORDERED that Alcides Aballe-Gonzalez's motion for a sentence  
11 reduction under Amendment 821 [ECF No. 33] is **DENIED** with prejudice.

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14 U.S. District Judge Jennifer A. Dorsey  
15 March 12, 2024  
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21 <sup>7</sup> *Id.*

22 <sup>8</sup> ECF No. 33.

23 <sup>9</sup> ECF No. 36.

<sup>10</sup> Presentence Investigation Report at 7.

<sup>11</sup> *Id.* at 8.